REMARKS

A. OVERVIEW

This is submitted with the concurrently filed Request for Continued Examination. Claims 1-23, and 25-37 are pending. Claim 24 has been previously withdrawn from consideration in response to the restriction requirement which held that it is related to an independent and distinct invention, and must be pursued in a related application.

Applicants wish to thank the Examiner for allowing the telephonic conference on March 16, 2005, wherein (a) the meaning of "non-functional descriptive material" with respect to the obviousness rejection of the new claim language in the independent claims was clarified by the Examiner, (b) the cited references were discussed relative the those claims, and (c) the representative of the assignee of the application, Scott Cavey, provided real-world examples of certain limitations in those claims. This response attempts to advance prosecution and submits clarifying amendments to certain claims in accordance with the discussions in the telephonic conference. Reconsideration is respectfully requested.

B. IDS

As requested by the Examiner, accompanying this response is a substitute copy of published PCT application WO 02/263534 A2 (listed inventor is Beurskens and owned by the owner of the present application). It is respectfully requested that this citation be considered and made of record.

C. § 112 REJECTIONS

1. First Paragraph

Claim 12 describes "multiple stages of approval by both parties" of a contract. Support for this language can be found throughout the Applicants specification. For example, Figure 9, and its associated written description at specification pages 14-15, explicitly illustrates the following stages of approval before a contract is binding: (a) step 9-26, a user chooses a delivery location and, thus, "approves" this as a material term of the contract, (b) step 9-18, a user enters desired contract quantities by delivery period (again an "approval" before the contract formation can continue), (c) step 9-14, the quantities entered must not exceed the allocated quantities (thus another "approval" before the contract formation can continue). These are just examples.

However, to attempt to clarify and resolve this issue, Claim 12 has been amended. It is respectfully submitted the amendment remedies this rejection.

2. Second Paragraph

Applicants gratefully acknowledge the withdrawal of the rejection to Claims 21 and 22 regarding the concept of allocation. The Examiner has raised questions regarding the meaning of certain clauses in those claims. The issues regarding remaining claims will be addressed below:

a. The claims have been revised to try to clarify the relationship between "buyer", "user", "supplier", and/or "producer". The phrase "that producer" has been changed.

b. The claims have been revised to try to clarify the establishment of a defined allocation. Further clarification has been made regarding the allocation limitations, which will be discussed further with respect to the obviousness rejections.

c. The step regarding selection of a contract program has been clarified and tied into the remainder of the claim 1.

d. Applicants confirm the Examiner's statement that the term "pending contract" is a proposed contract. As set forth in Applicants' specification, e.g. page 13, lines 20-25, the system or method generates a contract for review by the parties after the parties have entered their respective input and the system/method has determined the parties, and the terms, can proceed. The generated contract is therefore pending or proposed subject to final review and execution by both parties. As further indicated in the specification, before signing by both parties, a generated contract can be edited. Again, this makes it clear that the generated contract in this context is "pending"; and not executed.

e. The words "qualify" or "qualifies" have been substituted by different words for clarification.

It is respectfully submitted that the clarifying amendments to the claims overcome any rejections under Section 112, second paragraph, for indefiniteness.

D. § 103 OBVIOUSNESS REJECTIONS

The Examiner has withdrawn the prior Section 103 obviousness rejection based solely on Walker U. S. Patent 5,794,207 ("Walker"). The new rejection is based on a combination of Walker with Silverman U.S. Patent 5,924,082 ("Silverman"). The Walker patent has been discussed at length in Applicants' prior responses, which are incorporated by reference herein. It is respectfully submitted that Walker is not legal prior art to Applicants' claimed invention for the reasons previously stated. However, it is respectfully submitted Applicants' claims are not

obvious in light of, and are patentable over Walker, or Walker in combination with Silverman, for the following reasons.

1. Walker and Silverman are not analogous art

To support a *prima facie* case of obviousness, Walker and Silverman must both be analogous to the claimed invention (*i.e.* in the field of endeavor of the claimed invention or reasonably pertinent to the problem being solved by the claimed invention).

Walker is a bilateral request for quote (RFQ) or conditional purchase order (CPO) system for products or goods, having a central focus and express goal of allowing one party to unilaterally bind the other. It is not a system for facilitating the formation of production contracts. Therefore, it is not in the field of endeavor of Applicant's claims. It also does not address the central problem addressed by Applicant's claims—how to handle multiple buyers and producers, where multiple producers can try to form contracts to meet a single buyer's desired needs.

Silverman relates to bids and offers for financial instruments. In one sense it takes a vastly different approach than Walker—it requires party-to-party negotiation over the final price. Silverman teaches scoring or rating different potential buyers for a financial instrument to select the highest scoring potential buyer. Then it requires the single seller and single selected buyer to engage in bilateral negotiations to try to reach a final price. Silverman is not in the field of production contracts. It does not address the problem addressed by Applicant's claimed invention.

Therefore, it is respectfully submitted that neither Walker nor Silverman are analogous art and that they do not support a *prima facie* case of obviousness.

2. Neither Walker nor Silverman teach they should be combined

As discussed immediately above, Walker and Silverman teach two different approaches to buying and selling different things than the Applicant's invention. Walker wants the ability for either party to unilaterally bind the other. Silverman requires a party-to-party negotiation before anyone is bound. These are antithetical concepts.

Walker and Silverman thus do not support a *prima facie* case of obviousness, which requires that those references contain a reason, suggestion, or motivation to combine or modify them with each other.

3. Walker and Silverman do not teach the claimed invention, even if combined.

For argument's sake, even if combined, Walker and Silverman must appear to show or suggest the claimed invention to one of ordinary skill in the art, as considered in the framework of *Graham v. Deere,* 383 U.S. 1 (1966), namely: (i) What is the state of the art? (i.e. what is the relevant prior art to consider?), (ii) What is the level of ordinary skill in the art? (from what viewpoint do we consider what is or is not obvious), and (iii) What are the differences between the state of the art and the claims at issue? (How substantial are the differences to one of ordinary skill?)

a) Independent Claim 1

A combination of the teachings of the two references lack the following material limitations of Applicant's claims 1:

a. The preamble of Claim 1 explicitly calls for "[a] method of facilitating the formation of agricultural contracts for the future contracting of agricultural commodities". There is no mention of this in either reference. It is true Walker mentions "commodities", but it does not discuss them in the context of a method for assisting the efficient formation of contracts for

future contracting. The difference is substantial. Under 35 USC §100(b), a "process" (or method) can include "a new use of a known process, machine, manufacture, composition of matter, or material". Thus, at a minimum, Applicant's method claim 1 is distinguishable from Walker or Silverman. This is an independent ground for patentability. But further, there is no mention of application of either to formation of these contracts. Different considerations come into play. The teaching must be found in Walker or Silverman; but is absent.

b. Element (c) of Claim 1 specifically calls for establishment of "a defined allocation of an amount of a type of agricultural commodity according to at least one allocation parameter." No mention of any defined allocation or allocation parameter is seen in Walker or Silverman. As set forth in Applicants' specification, allocation refers to some pre-set requirement set by a buyer or producer. As Mr. Cavey discussed in the telephonic interview, an example could include geographic restrictions on a buyer's desired quantity of a certain type of agricultural product. One example given was a buyer might want 1000 acres of corn from northern Iowa and 2000 acres from southern Iowa. The reason might be one of risk management—if there is catastrophic weather in northern Iowa during the growing season, the entire contracted crop is not lost. The reason might be economic, e.g., to distribute the crop to different locations for cheaper transportation costs to distributed areas than if all from one location. Nowhere is teaching found in Walker or Silverman of this type of allocation. Allocation can apply in other contexts. As Mr. Cavey explained, the allocation could involve how much of the crop can be stored in a certain grain elevator, or how much seed would be supplied from the buyer back to the producer (if the buyer is a seed company and contracts with farmers/producers, to grow seed corn). Allocation could apply to who the suppliers are, e.g., a buyer may want to spread out the contracts for a desired need between a variety of different producers. This is part of the essence

of production contract formation, and why the state of the art had so many problems and deficiencies.

c. Claim 1, element (e) requires, "in response to input from a buyer or producer, designating a specific contract program." Walker and Silverman have no teaching of selection of production contract options. This corroborates why the references are not analogous to Applicants' claims.

d. Claim 1 element (g) requires, "comparing the input data from the supplier with current data from the buyer, including desired type, amount available, and the at least one allocation parameter". Walker and Silverman have no teaching of comparison of amount available for contracting (which can be changing continuously) and an allocation parameter (e.g. whether the grain would be coming from an authorized geographic area or producer, and/or whether the amount offered to grow is within the available allocation.

e. Claim 1, element (h) requires "if the input data from a suppler exceeds the allocation parameter requiring resubmission of at least some input data from the suppler for that supplier to continue". Walker and Silverman do not teach that a party is forced to back up and resubmit at least some input data if the system determines. Mr. Cavey gave the example that there might be an allocation of 1000 acres to northern Iowa. If a northern Iowa farmer moves forward towards a commitment, but enters 1,100 acres, the system would execute step (h) automatically. This is an important point. Claim 1 specifically includes this automatic "policing" step. In the context of forming production contracts, it is important because it prevents an over-commitment from any user relative to an allocation. As one can imagine, if over-commitments were allowed, it could create a domino affect. If you allowed one over-commitment to proceed, you may have to contact over suppliers or farmers to request a change

in their commitments. If an agreement is executed, the supplier may not agree. You would have to go on to the next, and so on. As described in Applicants' specification, one of the advantages of the present invention is the combination of things to make forming production contracts more efficient. Walker or Silverman do not have this element (h). The reason this feature can work is that this policing is done prior to a contract being binding for the farmer making the commitment. But the policing function depends on preceding steps of claim 1; e.g. step (c)—establishing a defined allocation; step (f) receiving input data from a potential supplier...relating to a specific type and amount of commodity which the supplier is willing to grow or supply to the buyer at harvest or at other times. Walker allows posting of a given quantity desired to buy, and then allows a seller to unilaterally execute a supply contact for that quantity. It allows the seller to counter-offer, but does not have any teaching or disclosure of the system automatically policing an allocation parameter. Silverman allows posting of offer to sell a financial instrument and any number of buyers can bid on it. Silverman calculates a score or rank for each bid to estimate which bid is likely the best (and thus most likely for the seller to take), but then teaches the two parties are put in communication to bilaterally negotiate a final price. It allows negotiation, but does not have any teaching or disclosure of the system automatically policing an allocation parameter.

f. Claim 1, element (i) describes that a draft contract of the type of the specific contract program of step (e) is automatically generated if the allocation parameter is met, and is then reviewable by buyer and seller. Either can accept or reject, but it is not executed until both accept. Walker allows unilateral binding of the contract. Silverman does not generate a draft contract—it only provides that "communications between the parties may also be recorded, for example, to enable parties to verify the agreed upon transaction terms at a later time".

Silverman, col. 13, lines 12-14. Silverman teaches away form forming a proposed contract that is presented for contemplation to the parties—it teaches a method for identifying the best potential match of parties and hands them over to start a bilateral negotiation.

g. Claim 1, element (j) describes a dynamic, real time automatic decrement of current amount available for contracting each time a pending contract is issued. Another important part of the Applicants' method of claim 1, the buyer, other suppliers, other authorized parties, and even the supplier that just signed a contract with the buyer, can view immediately what is left to contract. The latter supplier may want to jump in and contract for more. The buyer may want to readjust the allocation parameter(s). Elevator managers may want to check want storage space demand there might be. Walker may indicate if a posted buyer request has been bound by a seller, but it does not teach any allocation of a buyer request and, thus, does not teach or suggest anything about automatically decrementing a current amount available (which clearly contemplates there are cases when the whole amount to contract is not exhausted. Silverman likewise might indicate if a financial instrument has been sold, but does not teach anything about automatically decrementing available amount for contracting.

The specific differences between claim 1 elements and the cited references point out not only what is lacking in the teachings of Walker and Silverman relative to the limitations of Applicants' claim 1, but how claim 1 as a whole recites a much different method from either Walker or Silverman.

Those references address different fields and propose different solutions than Applicants' claims. A *prima facie* case of obviousness is therefore lacking based on any combination of Walker and Silverman.

For at least the foregoing, it is therefore respectfully submitted that Applicants' claim 1 is not obvious.

b) Dependent Claims 2, 4-8, 10-12

Claims 2, 4-8, and 10-12 are dependent from claim 1 are submitted to be allowable for the reasons expressed in support of claim 1. Claims 4-8 provide examples of agricultural commodities which can be contracted for production in the future (e.g. grains, oilseeds, fruits, vegetables, animals, fish). Again, Walker and Silverman do not speak to production contracts. Claim 9 lists specific data used by the method. Claim 10 lists specific information displayed by the method. Walker and Silverman do not teach or suggest these.

c) Dependent Claims 29-37

Claims 29-37 are also dependent on claim 1 and submitted to be allowable for the same reasons. Also, some of these claims present additional limitations not taught or suggested by the cited references:

Claim 29 adds the idea that a pending contract is converted by the method to a binding contract after acceptance by both buyer and supplier.

Claim 30 adds the limitation that an allocation can change over time.

Claim 31 adds the limitation that the integrity of data in the method is addressed by a special methodology related to use of an Internet browser.

Claim 32 specifically adds the limitation that quantity and type must be reentered if the original entry is not accepted under claim 1, element (h).

Claim 33 adds the limitation that the automatic decrement occurs when a contract is formed.

Claim 34 adds the limitation that security levels are used. This allows only authorized users, as well as provide different functions or information access to different users (claim 35).

Claim 36 makes it clear the method can apply to multiple buyers and suppliers simultaneously.

Claim 37 adds the limitation that an allocation parameter can have a message related to it communicated to a user.

These limitations are not disclosed, taught, or suggested in Walker or Silverman.

d) Independent Claims 13, 25 and 26

Independent method claim 13 is similar to claim 1 and submitted to be allowable for the reasons expressed in support of claim 1, as are dependent claims 14-23.

Independent apparatus claims 25 and 26 have similar limitations to those in claims 1, and are submitted to be allowable fro the reasons expressed in support of claim 1. Claims 27 and 28 are dependent from claim 26 and are submitted to be allowable for the reasons expressed in support of claim 26 (they are similar to claim 34).

e) Dependent Claim 3 and 19

Claims 3 and 19 are dependent from independent claim 1 and independent claim 13. They are submitted to be allowable for the reasons expressed in support of claims 1 and 13.

4. Secondary Indicia of Non-obviousness

Obviousness can also be rebutted by secondary indicia of non-obviousness (examples given in *Graham v. Deere*), such as:

a. a long-felt need in the art but no solution or failure of others (*i.e.* a substantial amount of time the art, though needing the invention, went without it);

b. commercial success (if there is a direct connection between the success and the invention; as compared to simply good marketing);

c. commercial acquiescence (persons would not usually act in a fashion contrary to their economic interest unless convinced of the invention's validity).

The references of record support the fact that a variety of on-line or computer-based trading systems have been known for years, but none is seen to teach the method of Applicants' claim 1 or suggest application to the method of forming production contracts. Walker talks of other buy-sell systems for its field (selling groups of fungibles). Silverman refers to prior patents relating to offer and bid systems for financial instruments. The Examiner cites to Harrington U.S. Patent 6161099, Lindsey U.S. 5285283, and Wagner U.S. 4903201 which do the same. It is also noted that Lindsey and Wagner were issued five and nine years ahead of Applicants' filing date, respectively, but are based on 1990 and 1983 filings respectively. This is relevant evidence that a variety of buy-sell systems have been around, but those concepts have not been applied to the field of Applicants' invention.

E. CONCLUSION

It is respectfully submitted that claims, as amended, are in form for allowance, and all other matters raised in the Office Action have been addressed and remedied. Favorable action is respectfully requested.

It is respectfully submitted that the fees and petition of extension of time are set forth in the concurrently filed Request for Continued Examination and Petition for Extension of Time, and authorization is given therein to charge Deposit Account No. 26-0084 for any required fees. No other fees or extensions of time are believed to be due in connection with entry of this response; however, please consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

If this response is not a result in the allowance of the application, the undersigned respectfully requests the courtesy of a telephone interview with the Examiner to discuss any remaining issues.

Respectfully submitted,

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Attachments: Copy of WO 02/063534 A2 (requested by Examiner)